

REMARKS

In accordance with above amendments, claims 1-2, 4, 6, 13, 17, 27, 40 and 49-50 have been amended. Claim 45 has been canceled and new claim 54 has been added. Claims 9-12 stand withdrawn from present consideration as being directed to a non-elected invention. Thus claims 1-8, 13-44 and 46-54 remain under consideration in the present application.

While no claim has been allowed, allowable subject matter has been indicated with reference to claims 40-45 if rewritten to overcome the certain rejections under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims. This is gratefully acknowledged.

It is believed that the amendments to the claims overcome the rejections based on 35 U.S.C. § 112 raised by the Examiner in the Action. Thus, claim 1 has been amended so that the preamble and step (a) agree. In claim 2, accumulating data has been added to a template constructing step and in claims 4 and 6 positive recitation of the one or more sensed parameters has been added.

In claim 13, a step for suggesting an optimum pace timing has been added. In claim 17 and 27, "over a desired range" has been clarified to "over a full range". In claim 49 a suggested change has been made and in claim 50, missing words have been added.

The rejection of claims 1-8, 13-21, 23, 24, 26-39, 46 and 49-53 under 35 U.S.C. § 102(b) as being anticipated by Bornzin (U.S.

Patent 5,891,176) is respectfully traversed. While Bornzin '176 may disclose the generality of linking the A-V delay interval to different activity levels of a patient, that reference clearly fails to teach or suggest trending one or more selected cardiac conduction times over a range of activity levels as the source of data responding activity level. This is a requirement of all of the present claims. His activity indicating measurements are made with physical sensors, the limitations of which the present invention seeks to overcome (see column 7, lines 52-55, for example).

Claims 1-8, 13-20, 27-39 and 50-53 have also been rejected under 35 U.S.C. § 102(e) as being anticipated by a patent to Turcott et al. (U.S. Patent 6,792,310) which was filed January 12, 2001. This rejection is also respectfully traversed on the merits. The Turcott et al. reference, like Bornzin '176, relies on a physiological sensor 108 to detect changes in cardiac performance or in the physiological condition of the heart on which to base any change in the pacing parameters. As indicated this requirement has been eliminated by the present invention.

The further rejection of certain claims under 35 U.S.C. § 103(a) based on either Turcott et al. '310 or Bornzin '176 are also respectfully traversed. The applied references taken either singularly or in combination neither disclose nor suggest a method of optimizing cardiac resynchronization therapy disclose and

claimed in the present application. It is believed that, based on a fair reading of the subject references, one could only conclude that the use of physiological sensors is required in order to adjust pacing parameters. The references do not suggest trending methods in accordance with the present invention.

To comply with the indication of allowable subject matter, claim 40 has been rewritten to include the limitation of independent claim 27 and, accordingly, should be allowable. Claims 41-44 depend from claim 40 and so should also be allowable. Claim 45 including limitations of claim 15 and claim 1 from which claim 15 depends has been rewritten as claim 54 which, applicants believe, should also now be allowable.

Based on the above amendments taken together with the remarks herein, applicants now believe the present claims to be in condition for allowance and reconsideration of the rejections and allowance of the claims is respectfully requested.

Respectfully submitted,

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